

## REMARKS/ARGUMENTS

The Examiner has principally relied upon WO 92/01394 (the '394 publication) to reject pending claims 1, 2, and 4-7 under 35 USC §102(a) and the remaining pending claims in combination with other references under §103(a). Thus, applicant believes it beneficial to review the rejections in light of the disclosure and teachings of the '394 publication.

The '394 patent is generally directed to a moisture barrier film comprising an edible protein and an edible polysaccharide. In relevant part, the publication states that "...the films of the invention are generally undetectable (whether visually or organoleptically) in the cooked products." Page 5 at lines 3-6. Thus, while there is no disclosure concerning the thickness of the films, one can infer that they are sufficiently thin so as to be generally undetectable. This inference is further bolstered by the fact that a hydrophobic coating applied to the film is only 0.0005" thick. Page 10 at lines 35-36. As a result, the disclosed moisture barrier film is intended to be overlooked by the consumer, and it appears to meet this objective.

Applicant's disclosed invention is in direct opposition to this objective. Applicant's films (also referred to as "sheets") are intended to not only be detectible, but actually emphasize this objective by incorporating synthetic visual and tactile features thereto. Most importantly, however, is the stated purpose of the composition found in the claim preambles of "receiving additional foodstuffs". Based upon the foregoing analysis of the '394 publication, it cannot be maintained that "films" in the thickness range disclosed by applicant in the instant application would be generally visually undetectable. Similarly, the films disclosed in the references of record are also "thin" films, and outside of the thickness ranges provided by applicant in the disclosure. See, the tables in EP 0 935 921 A1; column 7 lines 56-58 in EP 0 646 318 A1; column 6 lines 35-36 ("Any thin film forming apparatus can be used to form a protein film from the slurry of this invention.") and column 7 lines 52-56 ("The film is usually up to about 0.01 inch thick...although up to 0.003 inch...thickness provides the more desired film-like structure....") in US

4,133,901. Thus, applicant submits that there is no disclosure in the prior art of record concerning "thick" films in the ranges disclosed by applicant.

To this end, applicant has amended claim 1 to require that the intermediate film have a thickness of about 1mm to 4mm. This range is clearly not disclosed in the prior art of record, nor is there any suggestion therein to create "films" possessing this range of thicknesses. To the contrary, the emphasis of the prior art appears to be directed towards "thinness". Therefore, and with respect to claim 1 and those claims dependent thereon, applicant submits that the claimed articles of manufacture, as now amended, are both novel and non-obvious.

The Examiner has also summarily dismissed pre-amended claims 24 and 25 as being unpatentable, *per se*. Applicant respectfully disagrees. First, the Examiner has provided no support for this position. Second, the ability to impart visual or tactile features to a proteinacious film is neither disclosed nor suggested by the prior art of record. In fact, the primary reference relied upon by the Examiner teaches just the opposite. See, applicant's prior discussion of the '394 publication. The use of protein for forming film-like edible items is not common, and, as the prior art discloses, not intuitive. The ability to create edible products not only having the constituents identified by applicant in the specification and claims but to create a final product also possessing visual and tactile qualities is not simply a matter of design. Applicant invites the Examiner to identify any prior art disclosure referencing visual or tactile proteinacious sheets or films that are formed into enclosed or partially enclosed structures. Lacking such showing, applicant submits that claims 24 and 25, prior to amendment of any intermediate claim, are patentable over the prior art.

Notwithstanding the foregoing, applicant also submits that independent claim 20 is patentable over the prior art of record. A technical difficulty encountered with respect to high protein content films or sheets, as inherently presented in the instant application and well known to those persons skilled in the art, is the ability to join or bond such films or sheets to each other. Through experimentation, the applicant has found that suitable

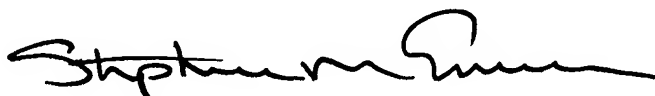
joining of at least two films according to applicant's disclosure occurs when the films or sheets have been "preset". Without permitting a preset, the films or sheets are too tacky, often resulting in unintentional joinder between the films or sheet at undesired locations. By the same token, if the films or sheets are cured, such as by application of heat and/or pressure, the issue of aggressive tackiness is removed but now suitable joining and subsequent bonding is compromised. Thus, the presetting action is considered important to the objective of efficiently forming a pocket or envelope for receiving additional foodstuffs.

As presently amended, claim 20 clarifies that the claimed film has undergone presetting prior to joinder of the two films about pre-established locations and subsequent curing to form bonds thereat. Unless the Examiner can identify the claimed method in the prior art, or a combination of references that are properly combinable (and do not result from application of improper hindsight), applicant submits that claim 20 and those dependent there from are patentable over the prior art of record.

With respect to amended claim 26, it should be clear that a proteinacious envelope defining an opening through which foodstuffs may be inserted patentably defines over the prior art of record for the reasons stated above.

Respectfully submitted this 13<sup>th</sup> day of June, 2005.

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